No. 3985.

IN THE

United States
Circuit Court of Appeals

For the Ninth Circuit

CONSOLIDATED CAUSES:

UNITED STATES OF AMERICA,

Appellant.

vs.

BENEWAH COUNTY, IDAHO, A. C. WUNDERLICK, C. A. WALKER, W. R. ARMSTRONG, and F. H. TRUMMEL,

and

KOOTENAI COUNTY, IDAHO, HANS JOHNSON, J. W. McCREA, FRANK A. MORRIS, and S. H. SMITH,

Appellees.

BRIEF OF APPELLEES

Upon Appeal from the United States District Court for the District of Idaho, Northern Division.

ROBERT E. McFARLAND,
Prosecuting Attorney for Benewah, County, Idaho, et al.
Residence, St. Maries, Idaho.

ROGER G. WEARNE,
Prosecuting Attorney for Kootenai County, Idaho, et al.
Residence, Coeur d'Alene, Idaho.

Solicitors for Appellees.

No. 3985.

IN THE

United States

Circuit Court of Appeals

For the Ninth Circuit

CONSOLIDATED CAUSES.

UNITED STATES OF AMERICA,

Appellant.

vs.

BENEWAH COUNTY, IDAHO, A. C. WUNDERLICK, C. A. WALKER, W. R. ARMSTRONG, and F. H. TRUMMEL,

and

KOOTENAI COUNTY, IDAHO, HANS JOHNSON, J. W. McCREA, FRANK A. MORRIS, and S. H. SMITH,

Appellees.

BRIEF OF APPELLEES

Upon Appeal from the United States District Court for the District of Idaho, Northern Division.

STATEMENT OF THE FACTS

The Appellees have no fault to find with Appellant's Statement of the Case, and hereby adopt it as their own.

BRIEF OF THE ARGUMENT.

1. The treaty with the Coeur d'Alene Indians does not prevent the operation of the act of May 8, 1906, (34 Stat. 182). Lone Wolf vs. Hitchcock, 187, U. S. 553. 47 Law Ed. 299.

2. The policy of the government is, as soon as pract-

icable to invest the Indian with full rights of citizenship and to terminate the relation of guardian and ward heretofore existing between the government and the Indians.

Declaration of Policy in the administration of Indian Affairs (Tr. pp. 58-61), Departmental Correspondence Tr. pp. 44-57)

3. Adjudication by the Secretary of the Interior of the Indians' competency and the subsequent issuance of patent with tender thereof to the Indians operated to convey the legal title and to relieve the government of its trust, and the fact that there has never been an actual physical delivery of the patents to the grantees is not of controlling importance.

U. S. v. Schurz, 102 U. S. 378. 26 Law. Ed. 167.

U. S. v. Laam, 149 Fed. 581.

ARGUMENT.

Although Appellant relies for a reversal of the judgment in this case upon four assignments of error, its contentions may be stated in two propositions, namely:—

1. That under the Act of May 8, 1906, giving the Secretary of the Interior authority to issue patents in fee to Indians when he should find and declare such Indians competent, the Secretary could not issue such patent in the case of the Coeur d'Alene Indians before the expiration of the twenty-five year trust period provided in the Treaty of the United States with that tribe, for the reason that such premature issuance of patent would infringe a vested right of the Indians to have lands therein held in

trust by the United States free from all charge and encumbrance for twenty-five years.

2. That the issuance of the patent in fee was inoperative because there was no delivery to or acceptance by the patentee.

The Treaty with the Coeur d'Alene Indians does not prevent the operation of the act of May 8, 1906 for the reason that Congress possesses a paramount power over the property of Indians by reason of its exercises of guardianship over their interest and such authority might be implied even though opposed to the strict letter of a Treaty with the Indians. The following opinion as delivered by Mr. Justice White in the case of Lone Wolf vs. Hitchcock, supra, is of vital importance to the case at bar.

> "The Appellants base their right to relief on the proposition that by the effect of the Article just quoted the Confederated Tribes of Kiowas, Comanches and Apaches were vested with an interest in the lands held in common within the reservation which interest could not be devested by Congress in any other mode than that specified in the said twelfth Article and that as a result of the said stipulation, the interest of the Indians in the common lands fell within the protection of the Fifth Amendment to the Constitution of the United States as such interest—indirectly at least—came under the control of the Judicial Branch of the government. We are unable to yield

our assent to this view. The contention in effect ignores the status of the contracting Indians and the relation of dependency they bore and continue to bear towards the government of the United States. To uphold the claim would be to adjudge that the indirect operation of the treaty was to materially limit and qualify the controlling authority of Congress in respect to the care and protection of the Indians, and to deprive Congress, in a possible emergency, when a necessity might be urgent for a partition and disposal of the tribal lands of all power to act if the assent of the Indians could not be obtained. Now, it is true that in decisions of this Court, the Indian right of occupancy of tribal lands, whether declared in a treaty or otherwise created, has been stated to be sacred or as sometimes expressed as sacred as the fee of the United States in the same lands.

But in none of these cases was there involved a controversy between Indians and the government respecting the power of Congress to administer the property of the Indians. The questions considered in the cases referred to, which either directly or indirectly had relation to the nature of the property rights of the Indians, concerned the character and extent of such rights as respected states or individuals. In one of the cited cases it was clearly pointed out that Congress possessed a paramount power over the property of the Indians, by reason of its exercise

of guardianship over their interests, and that such authority might be implied even though opposed to the strict letter of a treaty with the Indians. * *

But the right which the Indians held was only that of occupancy. The fee was in the United States, subject to that right, and could be transferred by them whenever they chose. The grantee, it is true, would take only the naked fee, and could not disturb the occupancy of the Indians; that occupancy could only be interfered with or determined by the United States. It is to be presumed that in this matter the United States would be governed by such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race. Be that as it may, the propriety or justice of their action towards the Indians with respect to their lands is a question of governmental policy, and is not a matter open to discussion in a controversy between third parties neither of whom derives title from the Indians. * *

The power exists to abrogate the provisions of an Indian treaty, though presumably such power will be exercised only when circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should do so. When, therefore, treaties, were entered into between the United States and a

tribe of Indians it was never doubted that the *power* to abrogate existed in Congress, and that in a contingency such power might be availed of from considerations of governmental policy, particularly if consistent with perfect good faith towards the Indians. * *

After an experience of a hundred years of the treaty-making system of government Congress has determined upon a new departure,—to govern them by acts of Congress. This is seen in the act of March 3, 1871, 'No Indian nation or tribe, within the territory of the United States, shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3d, 1871, shall be hereby invalidated or impaired.' ''

At the time Congress passed the act of May 8, 1906 it cannot be denied that the relationship of the government towards the Indians was that of guardian and ward. Such being the case, Congress must necessarily have had the power of performing the acts of guardianship, and to that end must necessarily have had the power to make all laws and regulations necessary to the end, with or without the consent of its Indian wards.

The policy of the government is, as soon as practicable to invest the Indian with full rights of citizenship and to

terminate the relation of guardian and ward heretofore existing between the government and the Indians. In the Declaration of Policy in the administration of the Indian Affairs, supra, we find the following:—

> "The time has come for discontinuing guardianship of all competent Indians and giving even closer attention to the incompetent that they may more speedily achieve competency.
>
> Broadly speaking a policy of greater liberalism will henceforth prevail in Indian administration to the end that every Indian, as soon as he has been determined to be as competent to transact his own business as the average white man, shall be given full control of his property and have all his lands and moneys turned over to him, after which he will no longer be a ward of the government."

Referring to the letter written by W. A. Mundell January 14, 1919, (Tr. pp. 53-55) commenting on the Declaration of Policy in the administration of Indian affairs supra, he wrote:—

> "The effectiveness of the Declaration of Policy promulgated April 17, 1917 is apparent from the number of fee patents that have been issued during the calendar year. * *
>
> The Competency Commission began work in 1915. Some of the work done by them is now being done over so that more satisfactory results may be obtained. The general rule is that the competent Indian does

not want a patent in fee nor to be declared competent, for he then has to bear his share of the burden of taxes. The greatest number of Indians have been declared competent since 1916 and this is due in a great measure to the Declaration of Policy."

From the foregoing it is apparent that in many instances Indians who were really competent and qualified for admission to citizenship did not desire to be so declared for the reason that citizenship would bring attendant responsibilities and obligations; hence the necessity for the exercise of its inherent power by the government in the bestowal of citizenship with the attendant responsibilities upon those Indians found to be competent to receive the same. The Declaration ends with this paragraph:—

"This is a new and far-reaching Declaration of Policy. It means the dawn of a new era in Indian administration. It means that the competent Indian will no longer be treated as half ward and half citizen. It means reduced appropriations by the government and more self-respect and independence for the Indian. It means the ultimate absorption of the Indian race into the body politic of the nation. It means in short the beginning of the end of the Indian problem."

Without going into detail it is to be said that a perusal of the departmental correspondence and documents leaves no doubt but that the view of the Department was

that a competent Indian should be so adjudged whether he so desired or not.

We further take the position that Congress having by act of May 8, 1906 conferred upon the Secretary of the Interior the power to declare an Indian competent and to issue to him a patent in fee for his allotted lands, and the Secretary of the Interior acting under the authority of said act having duly and regularly found the Indians herein named to be competent and having caused the issuance of a patent in fee to each of said Indians and having tendered the same to them, vested in said Indians title in fee to said lands; and the fact that said Indians did not accept said patents and that there had never been an actual physical delivery of the same to said Indians did not render said patents inoperative. In the case of

U. S. vs. Schurz, supra, (page 397) Mr. Justice Miller said:—

> "We are of opinion that when, upon the decision of the proper office that the citizen has become entitled to a patent for a portion of the public lands, such a patent is in that office made out and signed by the President and when the seal of the United States is affixed to the instrument countersigned by the Recorder of the Land Office, and duly recorded in the Record Book kept for that purpose, it becomes a solemn public Act of the Government of the United States and needs no further delivery or other authentication to make it perfect and valid. This in such

> case the title to the land conveyed passes by matter of record to the grantee, and that delivery as in cases of deeds of private individuals is not necessary to give effect to the granting clause of the instrument. The authorities on this subject are numerous and they are uniform. They have their origin in the decisions of the English Courts upon the grants of the Crown evidenced by instruments called there, as here, 'patents.' ''

Having the foregoing opinion in mind it must be concluded that when said Indians were duly and regularly declared by the Commissioner of Indian affairs to be competent it was incumbent upon the Secretary of the Interior to issue patents in fee to them and the issuance of said patent by the Secretary by reason of said Declaration of Competency, and the signing by the President of said patent, vested the title in fee in said Indians to the lands therein described.

Of the many authorities cited by Counsel for Appellant, we have been unable to find any which, in our opinion, are of controlling importance in sustaining Appellant's contention. The decision of the eminently able Court before whom this cause was tried, dismissing Appellant's Bill of Complaint, is a very logical and exhaustive analysis of the principles involved herein and in support of our contention we cite the following decision of the Honorable F. S. Deitrich, rendered in this consolidated cause, under date of September 16, 1922 as follows:

"DIETRICH, District Judge:

In respect to the questions in issue these two cases are identical, and they have been submitted upon the same general stipulation of facts. Each is brought upon behalf of a Coeur d'Alene Indian, to test the validity of claims for taxes levied by the state officers upon lands belonging to the Indian. And the fundamental question is whether, when the taxes were levied, the Government still held the title in trust for the benefit of the Indians, or such trusteeship had been terminated by valid fee patents. The lands were formerly a part of the Coeur d'Alene Indian Reservation and were allotted, in the one case to Maurice Antelope and in the other to Anasta Williams Smo, 178.80 acres to the former, and 160 acres to the latter. The provision under which the allotments were made is to be found in the appropriation act of June 12, 1906, (34 Stat. 325,335), and is as follows:

> 'That as soon as the lands embraced within the Coeur d'Alene Indian Reservation shall have been surveyed, the Secretary of the Interior shall cause allotments to the same to be made to all persons belonging to or having tribal relations on said Coeur d'Alene Indian Reservation, to each man, woman, and child, 160 acres, and upon the approval of such allotments by the Secretary of the Interior he shall cause patents to issue therefor un-

der the provisions of the general allotment law of the United States.'

In pursuance of the authority thus conferred upon the Secretary of the Interior, he caused the lands in question to be allotted to the Indians above named, and issued "Trust patents" to them on the 16th day of December, 1909. These trust patents contained the oridnary provisions of such instruments, one of which was a declaration that the Government would "hold the land thus allotted (subject to all statutory provisions and restrictions) for the period of twenty-five years, in trust, for the sole use and benefit" of the grantee.

Recently prior to the passage of this act, namely, on May 8, 1906, the general allotment act of February 8, 1887, (24 Stat. 388), and particularly Section 6 thereof, had been amended, to read as follows:

"Sec. 6. That at the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section five of this Act, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made and

who has received a patent in fee simple under the provisions of this Act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up within said limits his residence, separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property: Provided, that the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent: Provided further, that until the issuance of fee-simple patents all allottees to whom trust patents shall hereafter be issued shall be subject to the exclusive jurisdiction of the United States: And provid-

ed further, that the provisions of this Act shall not extend to any Indians in the Indian Territory." (34 Stat. 182.)

When, therefore, in the Act of June 21, 1906, supra, authorizing the allotment of the Coeur d'Alene Reservation, the Secretary of the Interior was directed "to cause patents to issue under the provisions of the general allotment law of the United States," reference must have been intended to the Act of 1887, as amended by this Act of May 8, 1906, and accordinly the trust patents here involved were issued expressly 'subject to all statutory provisions and restrictions," including, of course, the provision of this last named act authorizing the Secretary, in his discretion, to adjudge an allottee competent and to issue to him patent in fee prior to the expiration of the twenty-five year period. Assuming to act under the authority of this provision, the Secretary, in 1916, (so it is stipulated), "duly and regularly declared" the two allottees " to be competent," and thereupon issued to them "patents in fee" for the lands in controversy, but they refused and still refuse to accept them. It is further stipulated that, pursuant to the statutes of Idaho, the lands were duly and regularly assessed for taxes for the years 1917 to 1920 inclusive, during which period neither the fee patents nor the order or judgment of the Secretary of the Interior adjudging the Indians competent had

ever been revoked. It is further stipulated that on or about January 6, 1921, the Secretary of the Interior revoked the patents, but we are not advised of the circumstances of or reasons for such revocation. It is also stipulated that during the period the fee patents were outstanding, that is, from 1916 to 1921, "the Department of the Interior treated the said Maurice Antelope and Anasta Williams Smo as citizen Indians, and that the defendants (in levying taxes and taking proceedings to enforce the payment of the same) proceeded upon "the assumption that the Indians were competent and held title in fee simple to the lands. During this period the Indians did not alienate or attempt to alienate any of the lands, with the exception that Antelope sold to one of the defendant counties, and executed to it a deed for, a right of way for a public highway, for a consideration of $125.00. The other county defendant secured a right of way across the land of Smo by proceedings in eminent domain, in which Smo, as defendant, was treated as a competent party, and was paid $140.00 as compensation for the right of way.

It is not disputed that so long as the Government held the title in trust, the lands were exempt from taxation, and therefore, upon the facts as stipulated, there would seem to be but a single question left to decide:—Did the abjudication by the Secretary of the Indians' competency and the subsequent issuance

of patent, with tender thereof to the Indians, operate to convey the legal title, or at least to relieve the Government of its trust? The mere fact that there has never been an actual physical delivery of the patents to the grantees is not of controlling importance, for it is familiar law that a patent may be effective without actual delivery. United States v. Schurz, 102 U. S. 378. United States v. Laam, 149 Fed. 581.

With much apparent confidence the Government relies upon Morrow v. United States, 243 Fed. 854, but upon analysis of the record here it will be seen that the case has little, if any, application. In substance it is there held that a trust patent, together with the provisions of pertinent statutes in force at the time the patent is issued, constitutes a contract between the Indian and the Government, and vests in the former rights of which he can not be divested without his consent, and that therefore it was incompetent for Congress to change the property status established by the trust patent and the provisions of existing statutory law, over the objection of the Indian patentee. The act involved in that case, by which is was attempted to shorten the trust period, and hence to deprive the Indian of the valuable right of having his property exempt from taxation, was passed after the issuance of the trust patent. Here, as we have seen, the trust patents were issued by the Secretary of the Interior in pursuance of an act pro-

viding that they should issue "under the provisions of the general allotment law of the United States," and at the time of such authorization, and thereafter when the allotments were made and the trust patents were issued, the general allotment law of the United States expressly vested in the Secretary of the Interior the discretion, and he was authorized, whenever he was satisfied that an allottee was competent and capable of managing his own affairs, to cause to be issued to him a patent in fee simple. And there was the further provision that after the issuance of such fee patent "all restrictions as to sale, incumbrance, or taxation" of the land was removed. If, therefore, we apply the doctrine of the Morrow case, we must read into the trust patents here involved these provisions of law, by which apparently the Secretary of the Interior was authorized in his discretion to shorten the trust period, and by accepting the trust patents the patentees assented to the exercise of such authority as is thus conferred upon the Secretary.

The other contention of the Government is that the power of the Secretary of the Interior to adjudge an Indian competent in any specific case and to issue to him a patent, is conditioned upon the consent of such Indian and the acceptance by him of the patent. But in this view I am unable to concur. In considering the question it will be borne in mind that there is no suggestion of fraud or mistake on the part of

the Secretary of the Interior, or of irregularity in the proceedings leading up to the issuance of the patent, and the question therefore is strictly one of the power of the Secretary under the amendatory act of May 8, 1906. It will be noted that the language of the act is "that the Secretary of the Interior may, in his discretion, and he is hereby authorized, whenever he shall be satisfied that any Indian allottee is competent and capable of managing his or her affairs, at any time to cause to be issued to such allottee a patent in fee simple." Neither expressly nor inferentially does this language disclose an intent that the power thus conferred is confined to cases where the allottees make application or otherwise give their assent. Nor is it suggested either by the status of the Indians or the general and well-known policy of the Government in respect to them. They are wards, in a state of tutelage, and presumably are not competent always to choose what is for their good. Moreover, if, as has been the policy of the Government, the Indians are to be encouraged to adopt the institutions and conform to the habits of civilized life, it is important in their case, as in the case of white people, that they possess the power to impose upon all alike the burdens of maintaining such institutions. As in other communities, so civilized Indians must have roads and schools, and police protection, and these benefits cannot ordinarily be had

without taxation. If in a community of capable Indians the majority desire thus to create for themselves the conditions of civilized life, they might very well be unable to proceed if an unprogressive minority has the power to withhold their lands from taxation. The Government, too, would thus be greatly hampered in carrying out its policies, and that these considerations were in the mind of the Secretary when these patents were issued is not open to doubt. The policy of emancipating capable Indians from guardianship and investing them with the rights and responsibilities of citizenship and giving them complete control of much of their property had long been in force. The Department maintained standing Competency Commissions, whose duty it was to go about and make investigation of the capacity and competency of individual Indians, upon the various reservations, and to report their conclusions with recommendation, in order that, when the facts warranted, the competency of such individuals might be adjudged without unnecessary delay and patents in fee simple issue, for the purpose of relieving the Government from the duties of guardianship, and imposing upon such competent Indians the responsibility of caring for themselves, and of putting it within the power of communities to tax local property, in carrying out the enterprises and maintaining the institutions of civilized life. Such strength had this

view obtained that early in the year 1917, but a few months after the issuance of the fee patents here in question, the Commissioner of Indian Affairs, with the approval of the Secretary of the Interior, issued a formal "DECLARATION OF POLICY IN THE ADMINISTRATION OF INDIAN AFFAIRS," as of date April 17, 1917, from which we quote the first three paragraphs:

"During the past four years the efforts of the administration of Indian affairs have been largely concentrated on the following fundamental activities—the betterment of health conditions of Indians, the suppression of liquor traffic among them, the improvement of their industrial conditions, the further development of vocational training in their schools, and the protection of the Indians' property. Rapid progress has been made along all these lines, and the work thus reorganized and revitalized will go on with increased energy. With these activities and accomplishments well under way we are now ready to take the next step in our administrative program.

"The time has come for discontinuing guardianship of our competent Indians and giving even closer attention to the incompetent, that they may more speedily achieve competency.

"Broadly speaking, a policy of greater liberalism will henceforth prevail in Indian administration, to the end that every Indian, as soon as he has been

determined to be as competent to transact his own business as the average white man, shall be given control of his property and have all his lands and moneys turned over to him, after which he will no longer be a ward of the Government."

The Declaration ends with this paragraph:

"This is a new, far-reaching declaration of policy. It means the dawn of a new era in the Indian administration. It means that the competent Indian will no longer be treated as half ward and half citizen. It means reduced appropriations by the Government and more self-respect and independence for the Indian. It means the ultimate absorption of the Indian race into the body politic of the nation. It means, in short, the beginning of the end of the Indian problem."

Without going into detail, it is to be said that a perusal of departmental correspondence and documents leaves no doubt of the view of the Department that the Secretary had the authority, under the act of May 8, 1906, at any time, within his discretion, to declare the competency of an Indian and to issue to him a fee patent without his consent, or of the further view that such authority was indispensable to the successful execution of governmental policies touching the well-being and civilization of the Indians.

If then in the successful execution of well-known

governmental policies toward the Indians, it is essential that the Secretary of the Interior be clothed with such authority, and the Act of May 8, 1906, seems expressly to confer it, and in the administration of Indian affairs the executive officers have for many years assumed that such was the legislative intent, upon what theory are we to adopt a contrary view? Such power touching the property rights of Indian wards is not exceptional; it is rather the rule. By the original allotment act itself (24 Stat. 388), upon the refusal or failure of an adult Indian to select an allotment, the Secretary is authorized to make the selection for him (Sec. 2). So after lands are allotted the Secretary may, without the consent of the allottees, grant rights of way. Act May 3, 1901, 31 Stat. 1083. Act May 6, 1910, 36 Stat. 349. Act March 2, 1917, 39 Stat. 973. By the Act of January 26, 1895, as amended April 23, 1904, (28 Stat. 641, and 33 Stat. 297), the Secretary is authorized to correct mistakes in the issuance of trust patents by canceling the same. By Section 5 of the general allotment act, the President is authorized to extend the trust period beyond twenty-five years. It will hardly be suggested that before he can do this in any particular case he must have the consent of the Indian allottee. But is there not quite as much reason there as here for interpolating a provision requiring the Indian's consent? In case of the death of an In-

dian before final patent the Secretary may ascertain the heirs, and if he regards them as competent he "shall issue" to them patents in fee simple; but if they are incompetent the lands may be sold and the proceeds held in trust for them. Act May 29, 1908, 35 Stat. 444. Act June 25, 1910, 36 Stat. 855. Act May 18, 1916, 39 Stat. 127. By act of October 19, 1888, Section 2, (25 Stat. 612), one allotment may be exchanged for another, but the consent of the Indian interested is expressly required. Why not a similar requirement here if Congress so intended?

Upon a consideration of the whole case I have been unable to escape the conclusion that Congress intended to confer upon the Secretary of the Interior the unqualified authority, within his sound discretion, to declare an Indian allottee competent, and to issue to him a patent in fee, and that such power may be exercised without infringing any vested right of the Indian, because such was the law at the time the allotments here involved were made and the trust patents issued.

Whether the attempted revocation of the fee patents by the Secretary in 1921 was or was not effective we need not now decide; there is no suggestion in the record of the ground upon which the action was taken. By express stipulation, in the year 1916 the two Indian allottees were duly and regularly declared by the Secretary of the Interior to be com-

petent, and thereupon the patents in fee issued. If, as we hold, the Secretary had the power to take such action without the consent of allottees, these two Indians had the status of citizens, and they were possessed of the complete title in fee simple to these lands during the entire period covered by the tax proceedings now assailed. It must therefore be held that under the provisions of the Act of May 8, 1906, the lands were subject to taxation and the taxes in question are valid. Accordingly the bill of complaint in each case will be dismissed with prejudice.

Endorsed. Filed Sept. 18, 1922.

W. D. McREYNOLDS,

Clerk."

In our opinion based upon the authorities above cited and upon the opinion of the Honorable F. S. Deitrich, Judge of the Court below the judgment should be affirmed.

Respectfully submitted,

ROBERT E. McFARLAND,
Prosecuting Attorney for Benewah, County, Idaho, et al.
Residence, St. Maries, Idaho.

ROGER G. WEARNE,
Prosecuting Attorney for Kootenai County, Idaho, et al.
Residence, Coeur d'Alene, Idaho.

Solicitors for Appellees.